



PROPOSAL FOR NEXT STEP IN DEVELOPMENT OF A STATEWIDE PUBLIC DEFENDER SYSTEM FOR MISSISSIPPI

“The State Defender shall ... develop plans and proposals for further development of a statewide public defender system ...” *Miss. Code* Section 99-18-1 (7).

The Office of State Public Defender (OSPD) submits this plan as the “next step” in development of a statewide public defender system to ensure Constitutional compliance in a fiscally efficient manner. This proposal differs from the Mississippi Public Defender Task Force recommendations in three significant ways. It does NOT establish a state commission, create district defender offices, nor amend existing statutory authorizations for county public defender offices.

The Task Force¹, originally created by the Legislature in 2000 and reauthorized under the leadership of Mississippi Supreme Court Presiding Justice Jim Kitchens in 2015, concluded its work in 2018 with submission of a [Final Report](#) and Recommendations to the 2019 Legislature. The Final Report was based primarily on the [independent evaluation](#) of our system by the Sixth Amendment Center. That report was commissioned by the Task Force in 2016 and funded with a grant from the United States Department of Justice.

The Task Force recommendations included creating a commission and “District Defender” offices in each circuit court district to oversee the delivery of services and to amend the existing statutes that authorize county public defender offices to conform. While a sound recommendation we believe a more modest “next step” is called for.

Our current proposal can be most closely compared to the Michigan reforms discussed in the Sixth Amendment Center Report. Essentially OSPD would be a grant making entity subsidizing local programs and service providers to help raise the level of services based on objective, evidence-based standards and recognized best-practices. A function we already perform in the child welfare system.

This proposal would allow OSPD to provide representation in any criminal or youth court matter in which there is a constitutional right to counsel. It also conforms OSPD enabling legislation to reflect the changes in the structure and operations of the agency resulting from the 2011 merger of Indigent Appeals and Capital Defense to form OSPD and the 2016 Budget Transparency Act which changed OSPD from a special fund to a general fund agency. Finally, it provides OSPD access to youth courts to facilitate evaluation, planning and enforcement of training mandates.

¹ The Task Force was comprised of stakeholders from across the criminal justice system including judges, prosecutors, county supervisors and defense lawyers who practice public defense and private criminal defense law.

Key Findings of Task Force:

- From county to county there are vast disparities in spending and caseloads.
- Without a state-level body setting objective standards and evaluating systems under those standards the people of the state of Mississippi will never know if or to what extent the indigent defense system suffers from waste, fraud, or abuse.
- Mississippi is the only state in the Southeast that relies on primarily local funding and is locally administered with no state-level oversight.
- Indigent defense services, being a constitutional right of the people and obligation of the government, should be primarily provided at the state rather than local level.

The Sixth Amendment Center findings:

1. The State of Mississippi has no method to ensure that its local governments are fulfilling the state's constitutional obligation to provide effective assistance of counsel to the indigent accused in felony cases in its trial courts.
2. The State of Mississippi does not ensure the independence of the defense function from undue judicial interference in the selection and compensation of felony indigent defense attorneys.
3. Outside of death eligible cases, there are no standards or oversight in Mississippi to ensure that felony indigent defense attorneys have the necessary qualifications, skill, experience, and training to match the complexity of the cases they are assigned.
4. Throughout the State of Mississippi, indigent defendants charged with felony offenses are denied the right to counsel at the critical pretrial stage between arrest and arraignment following indictment, a period that is commonly at least a few months and occasionally as long as a year or more.
5. The State of Mississippi does not ensure that felony indigent defense attorneys have sufficient time and necessary resources, including investigators and social work services, to provide effective representation.
6. Felony indigent defense attorneys in Mississippi consistently carry excessive caseloads that prevent the rendering of effective representation.

[The Right to Counsel in Mississippi](#): *Evaluation of Adult Felony Trial Level Indigent Defense Services*

The **Sixth Amendment Center** also made several **recommendations**, the first being to:

- Authorize a state-level entity (either OSPD or a new commission) to promulgate, implement and enforce standards that define how effective indigent defense services should be provided, including at a minimum: attorney qualifications, performance standards and supervision protocols; time sufficiency standards; continuity of services standards; client communication protocols; and data collection standards.

OSPD requested changes to general law with explanation

1. Amend 99-18-1

Line 26-30 OSPD is no longer a special fund agency

Line 34-35 qualifications are too limited

Line 56-57 taskforce no longer exists

2. Amend 99-18-13

Line 78-81 moves authority from 99-18-17 & 99-40-1

Line 83-84 NEW - authority to be involved in all cases where Constitutional right exists

Line 85, 87-89 NEW - objective indigence standard based on existing statute

Line 92-93 explicitly authorizes state-county partnerships

3. Amend 99-18-17

Line 106, 109-127 conforms to Transparency Act, moved to 99-18-13

4. Create 99-18-19

Line 129-149 moves authority from 99-40-1 to new section in chapter 18

5. Create 99-18-21

Line 151-163 move authority from 99-40-1 to new section in chapter 18

6. Delete 99-40-1

Line 165-246 moved to Chapter 18 (4. & 5.)

7. Amend 43-21-203

Line 261-264 NEW - provides access to youth courts for training/planning

8. Amend 43-21-261

Line 343-344 NEW - clarifies file/information sharing with defense team

Line 467-476 NEW – access to youth court data

AN ACT TO AMEND MISSISSIPPI CODE SECTION 99-18-1 TO CONFORM TO SB 2362 (2016) THE BUDGET TRANSPARENCY AND SIMPLIFICATION ACT; TO AMEND QUALIFICATIONS OF STATE DEFENDER; TO DELETE REFERENCE TO PUBLIC DEFENDER TASK FORCE; TO AMEND MISSISSIPPI CODE SECTION 99-18-13 TO CONFORM TO SB 2563 (2011) REGARDING CONSOLIDATION OF PROGRAMS; TO GRANT AUTHORITY TO REPRESENT PEOPLE IN ANY CRIMINAL OR YOUTH COURT MATTER WHERE THERE IS A CONSTITUTIONAL RIGHT TO COUNSEL; TO AMEND MISSISSIPPI CODE SECTION 99-18-17; TO CREATE MISSISSIPPI CODE SECTIONS 99-18-19 AND 99-18-21 AND TO REPEAL MISSISSIPPI CODE SECTION 99-40-1 TO FURTHER CONFORM TO SB 2563 (2011); TO AMEND MISSISSIPPI CODE SECTION 43-21-203 TO PROVIDE OFFICE OF STATE PUBLIC DEFENDER ACCESS TO YOUTH COURTS; TO AMEND 43-21-261 TO ALLOW THE OFFICE OF STATE PUBLIC DEFENDER ACCESS TO MYCIDS DATA BASE AND RELATED MATTERS.

§ 99-18-1. Office of State Public Defender created; personnel; funding sources; qualifications, duties, removal of state defender; funding of agency expenses; deposit of monies into State General Fund

(1) There is hereby created the Office of State Public Defender. The Office of State Public Defender shall consist of a State Defender who shall be appointed by the Governor with the advice and consent of the Senate for a term of four (4) years and staffed by any necessary personnel as determined and hired by the State Defender.

~~(2) Funding for the Office of State Public Defender shall come from funds available in the Capital Defense Counsel Fund, the Indigent Appeals Fund and the Public Defenders Education Fund as determined by the State Defender. The State Defender shall have the authority to transfer funds between the various funds to efficiently and effectively accomplish the mission of the Office of State Public Defender and its divisions.~~

(3) The State Defender must be a duly licensed attorney admitted to the practice of law in this state, have practiced in the area of criminal law for at least five (5) years and shall meet all qualifications to serve as lead trial and or appellate counsel in death penalty cases as may be set by the Supreme Court of Mississippi. The salary of the State Defender shall be no more than the maximum amount allowed by statute for a district attorney.

(4) The State Defender may be removed by the Governor upon finding that the State Defender is not qualified under law, has failed to perform the duties of the office, or has acted beyond the scope of the authority granted by law for the office.

(5) The Office of State Public Defender shall be responsible for the administration, budget and finances of the Divisions of Capital Defense Counsel, Indigent Appeals and Public Defender Training, which shall be divisions of the Office of State Public Defender.

(6) The State Defender may simultaneously serve as State Defender and as director of one or more divisions but shall receive no additional compensation for doing so. Nothing in this chapter shall prohibit the State Defender from directly representing clients of the office. Nothing in this chapter shall be construed to prevent an employee of one (1) division of the Office of the State Public Defender from working, in whole or in part, for another division.

(7) The State Defender shall coordinate the collection and dissemination of statistical data and make

such reports as are required of the divisions, develop plans and proposals for further development of a statewide public defender system ~~in coordination with the Mississippi Public Defenders Task Force~~ and to act as spokesperson for all matters relating to indigent defense representation.

(8) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(9) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

§ 99-18-13. Powers and duties of State Defender

(1) The State Defender is hereby empowered to pay and disburse salaries, employment benefits and charges relating to employment of division staff and to establish their salaries and expenses of the office; to incur and pay travel expenses of staff necessary for the performance of the duties of the office; to rent or lease on such terms as he may think proper such office space as is necessary in the City of Jackson to accommodate the staff; to enter into and perform contracts and to purchase such necessary office supplies and equipment as may be needed for the proper administration of said offices within the funds appropriated for such purpose; and to incur and pay such other expenses as are appropriate and customary to the operation of the office. The State Defender is further authorized to solicit and accept monies, gifts, grants or services from any public or private source, for the purpose of funding, operating and executing the duties of the office.

(2) The State Defender may represent indigent persons in criminal or youth court matters where the person has a constitutional right to appointed counsel and provide representation to parents or guardians who have been determined ~~by the youth court judge~~ to be indigent and in need of representation in an abuse, neglect or termination of parental rights proceeding or appeal therefrom. In determining whether a person is indigent the agency shall substantially follow the procedure set forth in Mississippi Code Section 99-19-20.1(1).

(3) Representation may be provided by staff or contract counsel including, but not limited to, by contract with legal services organizations and/or county public defender programs.

§ 99-18-17. Conflict of interest; employment of qualified private counsel; payment of fees and expenses; Capital Defense Counsel Fund

(1) If at any time during the representation of two (2) or more defendants, the State Defender determines that the interests of those persons are so adverse or hostile they cannot all be represented by the staff of the Capital Counsel Division without conflict of interest, or if the State Defender determines that the volume or number of representations shall so require, the State Defender, in his sole discretion, notwithstanding any statute or regulation to the contrary, shall be authorized to employ qualified private counsel. Fees and expenses approved by order of the court of original jurisdiction, including investigative and expert witness expenses of such private counsel, shall be paid by funds appropriated ~~to the Capital Defense Counsel Fund~~ for this purpose.

(2) ~~There is created in the State Treasury a special fund to be known as the Capital Defense Counsel Fund. The purpose of the fund shall be to provide funding for the Capital Defense Counsel Division. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the State Defender. The fund shall be a continuing fund, not~~

~~subject to fiscal year limitations, and shall consist of:~~

~~—(a) Monies appropriated by the Legislature for the purposes of funding the Capital Defense Counsel Division;~~

~~—(b) The interest accruing to the fund;~~

~~—(c) Monies received under the provisions of Section 99-19-73;~~

~~—(d) Monies received from the federal government;~~

~~—(e) Donations; and~~

~~—(f) Monies received from such other sources as may be provided by law.~~

§ 99-18-19. Indigent Appeals Division created; director and staff; compensation; duties

(1) There is created the Indigent Appeals Division within the Office of the State Public Defender. This office shall consist of the Indigent Appeals Director who must be an attorney in good standing with The Mississippi Bar, and staffed by any necessary personnel as determined and hired by the State Defender. The Indigent Appeals Director shall be appointed by the State Defender. The remaining attorneys and other staff shall be appointed by the State Defender and shall serve at the will and pleasure of the State Defender. Attorneys in the office shall be active members of The Mississippi Bar. The attorneys in the office shall practice law exclusively for the office and shall not engage in any other practice. The office shall not engage in any litigation other than that related to the office. The Indigent Appeals Director shall be compensated at no more than the State Defender and other attorneys in the office shall be compensated at no more than the maximum amount allowed by statute for a comparable assistant district attorney.

(2) The office may provide representation on appeal for indigent persons convicted of felonies and indigent juveniles adjudicated delinquent in Youth Court. The office may provide advice and assistance to attorneys representing persons under felony charges in the trial courts and juveniles in Youth Court delinquency proceedings.

§ 99-18-21. Public Defender Training Division created

There is created in the Office of the State Public Defender the Public Defender Training Division. The division shall be staffed by any necessary personnel as determined and hired by the State Defender. The mission of the division shall be to work closely with the Mississippi Public Defenders Association to provide training and services to public defenders practicing in all state, county and municipal courts. These services shall include, but not be limited to, continuing legal education, case updates and legal research. The division shall provide (i) education and training for public defenders practicing in all state, county, municipal and youth courts; (ii) technical assistance for public defenders practicing in all state, county, municipal and youth courts; and (iii) current and accurate information for the Legislature pertaining to the needs of public defenders practicing in all state, county, municipal and youth courts.

~~§ 99-40-1. Indigent Appeals Division created; director and staff; compensation; duties; Indigent Appeals Fund; Public Defender Training Division created; Public Defenders Education Fund~~

~~—(1) There is created the Indigent Appeals Division within the Office of the State Public Defender. This office shall consist of the Indigent Appeals Director who must be an attorney in good standing with The Mississippi Bar, and staffed by any necessary personnel as determined and hired by the State Defender. The Indigent Appeals Director shall be appointed by the State Defender. The remaining attorneys and other staff shall be appointed by the State Defender and shall serve at the will and pleasure of the State Defender. The Indigent Appeals Director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The attorneys in the office shall practice law exclusively for the office and shall not engage in any other practice. The office shall not engage in any litigation other than that related to the office. The salary for the Indigent Appeals Director shall be equivalent to the salary of district attorneys and the salary of the other attorneys in the office shall be equivalent to the salary of an assistant district attorney.~~

~~(2) The office shall provide representation on appeal for indigent persons convicted of felonies but not under sentences of death. Representation shall be provided by staff attorneys, or, in the case of conflict or excessive workload as determined by the State Defender, by attorneys selected, employed and compensated by the office on a contract basis. All fees charged by contract counsel and expenses incurred by attorneys in the office and contract counsel must be approved by the court. At the sole discretion of the State Defender, the office may also represent indigent juveniles adjudicated delinquent on appeals from a county court or chancery court to the Mississippi Supreme Court or the Mississippi Court of Appeals. The office shall provide advice, education and support to attorneys representing persons under felony charges in the trial courts.~~

~~(3) There is created in the State Treasury a special fund to be known as the Indigent Appeals Fund. The purpose of the fund shall be to provide funding for the Indigent Appeals Division. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the State Defender. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:~~

~~—(a) Monies appropriated by the Legislature for the purposes of funding the Indigent Appeals Division;~~

~~—(b) The interest accruing to the fund;~~

~~—(c) Monies received under the provisions of Section 99-19-73;~~

~~—(d) Monies received from the federal government;~~

~~—(e) Donations; and~~

~~—(f) Monies received from such other sources as may be provided by law.~~

~~(4) (a) There is created in the Office of the State Public Defender the Public Defender Training Division. The division shall be staffed by any necessary personnel as determined and hired by the State Defender. The mission of the division shall be to work closely with the Mississippi Public Defenders Association to provide training and services to public defenders practicing in all state, county and municipal courts. These services shall include, but not be limited to, continuing legal education, case updates and legal research. The division shall provide (i) education and training for public defenders practicing in all state, county, municipal and youth courts; (ii) technical assistance~~

~~for public defenders practicing in all state, county, municipal and youth courts; and (iii) current and accurate information for the Legislature pertaining to the needs of public defenders practicing in all state, county, municipal and youth courts.~~

~~—(b) There is created in the State Treasury a special fund to be known as the Public Defenders Education Fund. The purpose of the fund shall be to provide funding for the training of public defenders. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the State Defender. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:~~

~~—(i) Monies appropriated by the Legislature for the purposes of public defender training;~~

~~—(ii) The interest accruing to the fund;~~

~~—(iii) Monies received under the provisions of Section 99-19-73;~~

~~—(iv) Monies received from the federal government;~~

~~—(v) Donations; and~~

~~—(vi) Monies received from such other sources as may be provided by law.~~

§ 43-21-203. Operation

(1) The youth court shall be in session at all times.

(2) All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults.

(3) Hearings in all cases involving children shall be conducted without a jury and may be recessed from time to time.

(4) All hearings shall be conducted under such rules of evidence and rules of court as may comply with applicable constitutional standards.

(5) No proceeding by the youth court in cases involving children shall be a criminal proceeding but shall be entirely of a civil nature.

(6) The general public shall be excluded from the hearing, and only those persons shall be admitted who are found by the youth court to have a direct interest in the cause or work of the youth court. Any person found by the youth court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel. To facilitate the mandates of Miss. Code §§ 43-21-201(3) and 99-18-13(2), all youth courts shall grant access to the Office of State Public Defender upon the representatives execution of a confidentiality oath as may be prescribed by the supreme court.

(7) In all hearings, a complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

(8) The youth court may exclude the attendance of a child from a hearing in neglect and abuse cases with consent of the child's counsel. The youth court may exclude the attendance of a child from any

portion of a disposition hearing that would be injurious to the best interest of the child in delinquency and children in need of supervision cases with consent of the child's counsel.

(9) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence:

(a) To subpoena, confront and examine the person who prepared or furnished data for the report; and

(b) To introduce evidence controverting the contents of the report.

(10) Except as provided by Section 43-21-561(5) or as otherwise provided by this chapter, the disposition of a child's cause or any evidence given in the youth court in any proceedings concerning the child shall not be admissible against the child in any case or proceeding in any court other than a youth court.

(11) An order or ruling of the youth court judge delivered orally must be reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays and statutory state holidays.

43-21-261. Disclosure of Records in general

(1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff or officials of the youth court, a guardian ad litem appointed to a child by the court, or a Court-Appointed Special Advocate (CASA) volunteer who may be assigned in an abuse and neglect case, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety, the functioning of the youth court, or to identify a person who knowingly made a false allegation of child abuse or neglect, and then only to the following persons:

(a) The judge of another youth court or member of another youth court staff;

(b) The court of the parties in a child custody or adoption cause in another court;

(c) A judge of any other court or members of another court staff, including the chancery court that ordered a forensic interview;

(d) Representatives of a public or private agency providing supervision or having custody of the child under order of the youth court;

(e) Any person engaged in a bona fide research purpose, provided that no information identifying the subject of the records shall be made available to the researcher unless it is absolutely essential to the research purpose and the judge gives prior written approval, and the child, through his or her representative, gives permission to release the information;

(f) The Mississippi Department of Employment Security, or its duly authorized representatives, for the purpose of a child's enrollment into the Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed;

(g) Any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health, safety or well-being of a child and that such disclosure is in the best interests of the child or an adult who was formerly the subject of a youth court delinquency proceeding;

(h) A person who was the subject of a knowingly made false allegation of child abuse or neglect which has resulted in a conviction of a perpetrator in accordance with Section 97-35-47 or which allegation was referred by the Department of Child Protection Services to a prosecutor or law enforcement official in accordance with the provisions of Section 43-21-353(4).

Law enforcement agencies may disclose information to the public concerning the taking of a child into custody for the commission of a delinquent act without the necessity of an order from the youth court. The information released shall not identify the child or his address unless the information involves a child convicted as an adult.

(2) Any records involving children which are disclosed under an order of the youth court or pursuant to the terms of this section and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed unless otherwise provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation relevant to a matter to be heard by a youth court, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person. The attorney for the parent, guardian or custodian of the child, upon request, shall be provided a copy of any record, report or investigation relevant to a matter to be heard by a youth court, but the identity of the reporter must be redacted and the name of any other person must also be redacted if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life, safety or well-being of the person. A record provided to the attorney under this section must remain in the attorney's control and the attorney may not provide copies or access to another person or entity except members of the attorney's multi-disciplinary defense team including experts engaged by the attorney without prior consent of a court with appropriate jurisdiction.

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.

(5) (a) The youth court prosecutor or prosecutors, the county attorney, the district attorney, the youth court defender or defenders, or any attorney representing a child shall have the right to inspect and copy any law enforcement record involving children.

(b) The Department of Child Protection Services shall disclose to a county prosecuting attorney or district attorney any and all records resulting from an investigation into suspected child abuse or neglect when the case has been referred by the Department of Child Protection Services to the county prosecuting attorney or district attorney for criminal prosecution.

(c) Agency records made confidential under the provisions of this section may be disclosed to a court of competent jurisdiction.

(d) Records involving children shall be disclosed to the Division of Victim Compensation of the Office of the Attorney General upon the division's request without order of the youth court for purposes of determination of eligibility for victim compensation benefits.

(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of Child Protection Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, or a public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.

(7) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court to any interagency child abuse task force established in any county or municipality by order of the youth court of that county or municipality.

(8) Names and addresses of juveniles twice adjudicated as delinquent for an act which would be a felony if committed by an adult or for the unlawful possession of a firearm shall not be held confidential and shall be made available to the public.

(9) Names and addresses of juveniles adjudicated as delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense as defined in Section 45-33-23, for any violation of Section 41-29-139(a)(1) or for any violation of Section 63-11-30, shall not be held confidential and shall be made available to the public.

(10) The judges of the circuit and county courts, and presentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a person convicted of a crime for sentencing purposes only.

(11) The victim of an offense committed by a child who is the subject of a youth court cause shall have the right to be informed of the child's disposition by the youth court.

(12) A classification hearing officer of the State Department of Corrections, as provided in Section 47-5-103, shall have the right to inspect any youth court records, excluding abuse and neglect records, of any offender in the custody of the department who as a child or minor was a juvenile offender or was the subject of a youth court cause of action, and the State Parole Board, as provided in Section 47-7-17, shall have the right to inspect such records when the offender becomes eligible for parole.

(13) The youth court shall notify the Department of Public Safety of the name, and any other identifying information such department may require, of any child who is adjudicated delinquent as a result of a violation of the Uniform Controlled Substances Law.

(14) The Administrative Office of Courts shall have the right to inspect any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose.

(15) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional

information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.

(16) The Administrative Office of Courts may, in its discretion, disclose to the Department of Public Safety any or all of the information involving children contained in the office's youth court data management system known as Mississippi Youth Court Information Delivery System or "MYCIDS."

(17) The youth courts of the state shall disclose to the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose. The disclosure prescribed in this subsection shall not require a court order and shall be made in sortable, electronic format where possible. The PEER Committee may seek the assistance of the Administrative Office of Courts in seeking this information. The PEER Committee shall not disclose the identities of any youth who have been adjudicated in the youth courts of the state and shall only use the disclosed information for the purpose of monitoring the effectiveness and efficiency of programs established to assist adjudicated youth, and to ascertain the incidence of adjudicated youth who become adult offenders.

(18) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

(19) In every case of child abuse or neglect, if a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply. In such cases, the following information may be released by the Mississippi Department of Child Protection Services: the cause of the circumstances regarding the fatality or medically serious or critical physical condition; the age and gender of the child; information describing any previous reports of child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition; the result of any such investigations; and the services provided by and actions of the state on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition.

(20) Any member of a foster care review board designated by the Department of Child Protection Services shall have the right to inspect youth court records relating to the abuse, neglect or child in need of supervision cases assigned to such member for review.

(21) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court in any administrative or due process hearing held, pursuant to Section 43-21-257, by the Department of Child Protection Services for individuals whose names will be placed on the central registry as substantiated perpetrators.

(22) The Department of Child Protection Services may disclose records involving children to the following:

(a) A foster home, residential child-caring agency or child-placing agency to the extent necessary to provide such care and services to a child;

(b) An individual, agency or organization that provides services to a child or the child's family in furtherance of the child's permanency plan to the extent necessary in providing those services;

(c) Health and mental health care providers of a child to the extent necessary for the provider to properly treat and care for the child;

(d) An educational institution or educational services provider where the child is enrolled or where enrollment is anticipated to the extent necessary for the school to provide appropriate services to the child; and

(e) Any other state agency if the disclosure is necessary to the department in fulfilling its statutory responsibilities in protecting the best interests of the child.

(23) To ensure compliance with paragraphs (3) and (4) of this section and to enable the Office of State Public Defender to carry out the mandates of 43-21-201(3) and 99-18-13(2) regarding certification of training for youth court defenders and authorizing the delivery of defender services in the youth courts, all attorneys certified by the Office of State Public Defender as being current with juvenile justice training shall be given access to the Mississippi Youth Court Information Delivery System or “MYCIDS” operated by the Administrative Office of the Courts. Access shall be equivalent to the access provided to prosecutors and/or representatives of the Department of Child Protection Services. All records involving children accessed, inspected or copied and the contents of such records shall be kept confidential.

SUPPORT FOR LOCAL DEFENDER PROGRAMS - Budget Narrative

Based on our experience in developing parent defense programs across the state we believe that the most effective and efficient way to begin to address the deficiencies identified in the independent study of our indigent defense delivery systems by the Sixth Amendment Center is for OSPD to partner with local governments to develop evidence-based indigent defense delivery systems in their jurisdictions.²

State funding will be focused on ensuring reasonable caseloads, compensation equity and adequate support services to facilitate early involvement with cases and continuity of representation throughout the process. To ensure measurable efficiency and be accountable for public funds each program will have to provide reliable data.

Phase 1 would establish three pilot projects, one in each supreme court district. OSPD will recommend one of two models, either a “multicounty” model or a “neighborhood defender” model. The overarching goal of this proposal is to improve services to indigent people accused of wrongdoing by the government without increasing cost to counties and municipalities. No county will be expected to contribute more to cost than they are currently spending. The total cost of fully funding three projects would be approximately \$3.3 million. At least \$1.3 million would be in county or private funds. The state cost for the three projects would not exceed \$2,000,000.

² Moving forward parent defense projects will be included in supported local defender programs. This decision is based on both our experience and research. For more detail see the Children’s Bureau memorandum addressing the “why and how” of delivering high quality legal representation for parents at all stages of the child welfare system. *U.S. Dept. of Health & Human Services, Admin For Children & Fam., Information Memorandum: High Quality Legal Representation for All Parties in Child Welfare Proceedings, ACYF-CB-IM-17-02 (Jan. 17, 2017).*

In addition to felony attorneys each model would include an attorney specializing in youth court defense, an investigator and social worker. The neighborhood defender model would include misdemeanor representation. Currently no defender systems include felony and youth court or felony and misdemeanor representation in the same office/project.

Possible pilot sites are a multicounty defender in Lamar, Marion and Pearl River counties; Clay, Lowndes and Oktibbeha counties, centered in Lee County, or any other 3-4 county configuration in the northern district. The neighborhood defender model is designed for the city of Jackson. Each office would have 5-6 FT attorneys, 2 FTE administrative positions, 1 FT investigator and 1 FT social worker. If private funding is available, the neighborhood defender would include a FT attorney providing civil legal services.

To qualify for state assistance a multicounty defender project will have to be established consistent with state statute and comply with court rules. Counties would have to establish a defender office as a primary delivery provider (25-32-1 through 25-32-19) and include meaningful participation of the private bar.

Participating counties would need to enter interlocal agreements to establish the office. (25-32-1) Agreements must include salary ranges and the counties would need to provide office space comparable to that provided to the local district attorney. Each office would have an expense account for ordinary expenses. (25-32-7) The office chief defender and outside contractors would be selected by the senior circuit judge on recommendations of the local bar. (25-32-3)

Private counsel services could be on individual cases compensated at an hourly rate (99-15-15 through 99-15-21) or on a part-time contract basis accepting multiple cases as is done in most counties currently. However, contracts must include time expectations and caseload limits. (*Right to Counsel in Mississippi* Recommendation #3)

Why a neighborhood defender in Jackson? A trip to Jackson municipal court dramatically demonstrates the need for a different way. Routinely people are called before the court for felony initial appearances and misdemeanor arraignments simultaneously. The city public defender stands with the person on the misdemeanors and the county public defender on the felony. Data shows that the people in city court also often have matters in youth court.

The neighborhood defender model first used in New York and more recently introduced in Detroit, which also includes civil legal services, has proven to be highly successful in more efficiently delivering criminal defense and resolving issues that contribute to failure to appear and recidivism.

The provider, regardless of model, must agree to adhere to standards promulgated by OSPD as recommended by the Sixth Amendment Center (6AC) report, *The Right to Counsel in Mississippi, Evaluation of Adult Felony Trial Level Indigent Defense Services* (March 2018). Standards will cover collecting and sharing data; early appearance and continuity of representation; staffing qualifications and performance reviews; client communication as well as training requirements for all staff. 6AC Report at p. 109.

Caseload limits will be based on the [OSPD 2016 study](#) and/or the National Advisory Commission on Criminal Justice Standards and Goals recommendations referenced in the 6AC report and our study.

Pay parity guidelines are based on the District Attorney Budget Request and DA enabling legislation. Needs assessment for support services are based on the May 2020 paper from the National Association for Public Defense with comparison to staffing in Mississippi DA offices.

A critical shortcoming of the current system exposed by the pandemic was the need for social workers connected to defender programs. Outside of the capital offices there are no social workers currently working in any public defender office in Mississippi although they are beginning to be introduced to parent defense programs.³ Addressing this flaw will be a priority of the program.

Social workers are essential to delivering competent criminal defense under current constitutional standards. Social workers assist with successful release from pre-trial incarceration, successful reentry, and sentencing advocacy. Perhaps the most important need for social workers in defender offices is in addressing the far too frequent client suffering from serious mental illness. Social workers perform essential functions that they are uniquely qualified to provide while reducing time and thus costs of attorneys and long-term in reductions in unnecessary or inappropriate incarceration and the costs associated with that. [*The Stepping up Initiative, National Association of Counties.*](#)

OSPD recommends establishing a compensation grid like the DA offices with slight modifications to account for function differences including county rather than district-wide offices and “lower” court caseloads. Compensation would be no greater than DA or comparable ADA, investigator or victim assistance coordinator which will be comparable to a defense social worker. Secretary/paralegal compensation should be equal to local DA office positions.

Chief Defender \$115,000 up to DA salary (per existing statute)

Felony Defender 3 – ten or more years of experience – \$100,000 to \$110,000

Felony Defender 2 – five to ten years of experience – \$90,000 to \$100,000

Felony Defender 1 – zero to five years of experience – \$85,000 to \$95,000

Misdemeanor Defender 2 – five or more years of experience - \$85,000 - \$100,000

Misdemeanor Defender 1 – zero to five years of experience - \$75,000 - \$85,000

Youth Court Defender 2 – five or more years of experience - \$85,000 - \$100,000

Youth Court Defender 1 – zero to five years of experience - \$75,000 - \$85,000

Investigator/MSW - \$45,000 to \$59,500

³ There is strong evidence supporting this model. Gerber et al, *Effects of an interdisciplinary approach to parental representation in child welfare*, *Children and Youth Services Review*, 102 (2019) 42-55, www.elsevier.com/locate/childyouth; Courtney, M. E., & Hook, J. L. (2012). *Evaluation of the impact of enhanced parental legal representation on the timing of permanency outcomes for children in foster care*. *Children and Youth Services Review*, 34(7), 1337-1343. This model has been utilized for many years in Washington and Colorado. OSPD has adopted Social Worker Practice Standards as was done with attorney practice. We looked to the standards adopted by the Washington State Office of Public Defense in 2008 and working with MDCPS have adapted those to Mississippi.